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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RONALD MICHAEL BEILKE, Defendant and Appellant.	B233418 (Los Angeles County Super. Ct. No. BA367476)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa B. Lench. Affirmed.

Willoughby & Associates, W. Anthony Willoughby, Danielle R. Claxton and Jason J. Buccat, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie C. Brenan and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

A jury convicted defendant and appellant Ronald Michael Beilke of two counts of misdemeanor conflict of interest in violation of Government Code section 87100.[1] Appellant contends that his conviction on one count must be reversed because the trial court failed to instruct the jury on the difference between a direct financial interest and an indirect financial interest for the purpose of determining whether a conflict of interest exists. He further contends that there was insufficient evidence to support his conviction on both counts.

We affirm. The trial court did not have a sua sponte duty to instruct the jury on the effect of an indirect financial interest, as there was no evidence to support the giving of the instruction appellant now proposes. Moreover, substantial evidence supported the verdict.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is Elected to Public Office.

The California Fair Political Practices Commission (FPPC) is an independent body that enforces, administers and provides advice regarding the Political Reform Act (§§ 81000-91014). The FPPC regulates conduct including conflicts of interest governed by section 87100. The purpose of that statute is to ensure that public officials make decisions in an impartial and unbiased manner, and will not act on matters that could change or enhance their own economic interests. The FPPC has developed an eight-step process that enables public officials to determine whether they should recuse themselves from a matter because of a conflict of interest.

A Statement of Economic Interest Form (Form 700) is issued by the FPPC to all individual public officials subject to state-law reporting requirements and requires them to report all gifts exceeding $50 from a single source during a calendar year. The FPPC sets annual limits on the total value of the gifts a public official may receive; public

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[1] All further statutory references are to the Government Code unless otherwise indicated.

officials who exceed the limit are reported to the enforcement agency within the FPPC and may be assessed a fine.

In March 2005, appellant was elected to serve as a member of the City Council for the City of Pico Rivera (City). He held office for a four-year term until 2009, spending part of that time as Mayor, and was not re-elected. As a City Council member, appellant was subject to the FPPC reporting requirements.

Appellant's Business Interests.

Beginning in 2001, appellant, as president of Beilke Enterprises, entered into a lease agreement for the real property at the intersection of Rosemead and Washington Boulevards in the City, and he opened a Wienerschnitzel restaurant at the site in 2002. The site was part of a larger retail complex called the Marketplace, which Charles Pridonoff helped develop. As early as 2003, appellant expressed to Pridonoff an interest in opening at the Marketplace a drive-through coffee kiosk called Java Jo'z as well as a quick serve car wash. Neither project came to fruition.

A May 2005 e-mail from appellant to James Anderson at Java Jo'z stated: "My new statu[s] a[s] City Council member should help push this project right along at this point," and "[m]y new contacts as an elected official have opened up a new world to me of people I might consider partnering with to help develop Java Jo'z out this way." In January 2006, appellant wrote to Pridonoff that one of the reasons he ran for office was to make the City more accommodating for businesses and then enclosed information about his Java Jo'z proposal. As part of a February 2006 e-mail to Pridonoff, appellant described some difficulties with the water lines running along Rosemead and Washington and wrote: "I hope this suggestion helps. Like I said, the city has no say so in this matter. However, I do have close friends on its elected board. I can help where I can. [¶] By the way, any word on the coffee kios[k]?" In March 2006, appellant sent an e-mail to Java Jo'z explaining his status as an early licensee and disclosing that he was now an elected City official. He followed up in April 2006, writing that "[t]he opportunities that my political career offer me are considerable, and can open doors that others might not even recognize." In another April 2006 e-mail, appellant followed up

with City Manager Charles Fuentes about his sewer concerns. Later in January 2007, during an interview conducted in connection with a District Attorney investigation of a different City Council member, appellant stated that the number one reason he ran for office was to get rid of the City Manager who would have effectively put him out of business.

Rosemead Boulevard Area Improvements.

During appellant's City Council tenure, the City undertook the Rosemead Boulevard Improvements project (Rosemead project), which included specific improvements at the intersection of Rosemead and Washington. City Public Works Director Michael Moore initiated the project by requesting proposals for a design. In March 2006, Moore brought Kabbara Engineering's proposal to the City Council, and in his role as a City Council member, appellant voted to approve the contract. At that time the Kabbara Engineering contract involved the redesign and repair of the intersection at Rosemead Boulevard and Slauson Avenue. Subsequently, in March 2008, the Kabbara Engineering contract was amended to encompass the intersections of both Rosemead and Washington, and Rosemead and Mines Avenue, and involved design work within 500 feet of appellant's restaurant including the addition of a left-turn lane and stamped or colored concrete. While there had previously been a left-turn pocket on Rosemead, Pridonoff dealt with City staff to advocate for a left-turn lane because he thought it would facilitate access into the Marketplace.

At various times throughout the Rosemead project, appellant personally expressed his concerns to City staff about the water lines and traffic shut-downs due to construction, noting the impact on his business. Moreover, appellant, on his own, would ask for certain changes to be made to the scope of work in the original Kabbara Engineering contract without having those changes approved by the entire City Council.

In November 2007, All American Asphalt contracted with the City to remove and replace concrete and lay asphalt on Rosemead between Washington and Mines, which included the intersection of Rosemead and Washington. All American Asphalt's work was based on the Kabbara Engineering design and included the installation of stamped

concrete at an additional cost to the City. In his capacity as a City Council member, appellant voted to approve the All American Asphalt contract in the amount of $1,320,598 and, as Mayor, signed the contract on the City's behalf.

Effective in March 2008, Mobility Solutions entered into a contract with the City to design traffic signals and take the project through the construction phase, which meant supervising that aspect of the work. In his capacity as a City Council member, appellant voted to approve the contract. One of the signals in the contract was a left-turn signal at the three-way intersection of Rosemead and the Marketplace, which essentially directed traffic in and out of the shopping center. No traffic study was conducted regarding the need for a left-turn lane or a left-turn signal. Appellant later abstained from voting on a separate contract to install the traffic signals.

In response to a hypothetical, Lynda Cassady, FPPC Division Chief of the Technical Assistance Division, opined that a foreseeable financial interest creating a conflict of interest was shown by a council member having a long-term lease on real property in an area that was within 500 feet of the subject matter upon which he was voting.

Appellant's Movie Theater Passes.

Between 2005 and 2009, Krikorian Theaters issued annual movie passes to City Council members, including appellant. The credit-card sized pass contained the member's name and allocated number of guests, and required the member to present identification and sign a logbook for each use. After a theater opened in the City in 2007, appellant used his pass approximately once or twice per week. However, theater staff checked identification inconsistently and multiple different signatures at overlapping movie times appeared in the logbook next to appellant's pass number. For example, according to the 2008 logbook appellant's pass was used 433 times.

In his Form 700 for the year 2008, appellant first indicated that he had received a gift of movie passes from Krikorian Theaters in the amount of $240; he later amended the form to include a value of $390, which was then the legal limit. Assuming an average ticket price of $8 and 433 uses, appellant's pass would have been worth $3,464 in 2008.

In 2010, appellant filed another amended Form 700 to reflect that value. His prior 2007 Form 700 had contained a movie pass value of $390, his 2006 Form 700 a value of $300 and his 2005 Form 700 a value of $250.

In January 2007, appellant voted on a resolution that updated Krikorian Theaters' disposition and development agreement with the City.

Defense Case.

Appellant stated that he had proposed his business ideas for the Marketplace well before he became a City Council member. He believed that he had put down an accurate value for the movie passes he received from Krikorian Theaters, doubling the amount he actually used the pass out of an abundance of caution. The City Attorney and the City Manager also gave him advice on how to fill out the Form 700. He suspected there may have been fraud in connection with the excessive use of his 2008 movie pass.

With respect to the Kabbara contract, appellant did not see that it included a left-turn lane at Rosemead and Washington, and believed the repaving and other improvements would benefit the entire community. He also believed that the inclusion of a left-turn lane was a benefit to public safety. He voted in favor of the All American Asphalt contract because the contract necessarily would be awarded to the lowest bidder. As with the Kabbara Engineering contract, he did not realize that the All American Asphalt contract one and one-half years later called for the construction of a left-turn lane. The Mobility Solutions contract included traffic signals at two intersections near Rosemead. On the advice of the City Attorney, he later abstained from the contract awarding the construction of the Mobility Solutions design.

The City employed a City Manager, and Fuentes served in that role during appellant's tenure on the City Council. According to Fuentes, the stamped concrete was installed at the Rosemead and Washington intersection for consistency, as it was a design feature that had been used in other areas of the Rosemead project. Fuentes also stated that the traffic signal at Rosemead and the Marketplace had been part of the original project design, but was inadvertently omitted before being added back, and was the result

of neighborhood complaints about traffic. He believed that a traffic study had been conducted for the signal.

Fuentes further stated that the City awarded the contract to All American Asphalt because it was the low bidder in response to a request for proposal. In his view, appellant had never designated a particular entity to receive a City contract or tried to influence when or how work was done in connection with the Rosemead project. Fuentes's wife served as the volunteer treasurer for one of appellant's election campaigns.

Congresswomen Grace Napolitano believed appellant to be honest and of the highest integrity and never knew him to abuse his power as a public official.

Information and Trial.

An information filed in June 2010 by the Los Angeles County District Attorney charged appellant in count 1 with perjury regarding his 2008 Form 700 and the Krikorian Theaters gift (Pen. Code, § 118, subd. (a)), in count 2 with felony conflict of interest as a result of voting on the Krikorian Theaters contract (§ 1090). Counts 3 through 5 alleged misdemeanor conflict of interest (§§ 87100 & 91000) relating to the Kabbara Engineering contract, the All American Asphalt contract and the Mobility Solutions contract, respectively. As to counts 2 through 5, the information further alleged malfeasance in office within the meaning of section 1021. Appellant pled not guilty and denied the special allegation.

A jury trial commenced in January 2011. The jury found appellant not guilty on counts 1 through 3,and guilty on counts 4 and 5.[2] After denying appellant's motion to dismiss count 4, the trial court suspended imposition of sentence and ordered appellant placed on summary probation for a period of three years with a number of terms and conditions, including the performance of community service and the payment of statutory fines and assessments. As one condition, appellant was ordered not to run for or hold elective office for a period of four years.

This appeal followed.

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[2] The record does not reflect any disposition of the special allegation.

DISCUSSION

Appellant contends that his misdemeanor convictions on counts 4 and 5 should be reversed because the trial court omitted an instruction on the effect of a public official's indirect interest in a governmental decision and the presumption arising therefrom, and because the evidence was insufficient to support the verdict. We find no merit to either contention.

I. The Trial Court Properly Instructed the Jury on the Applicable Law.

A. Conflict of Interest Principles.

The jury convicted appellant in counts 4 and 5 of violating section 87100, which provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (§ 87100; see *Witt v. Morrow* (1977) 70 Cal.App.3d 817, 822–823 ["the whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed"].) Pursuant to section 87105, a public official "who has a financial interest in a decision within the meaning of Section 87100" must publicly identify the financial interest that gives rise to the potential conflict of interest, recuse himself or herself from acting on the decision and leave the room until the vote or other disposition of the matter has concluded. (§ 87105, subd. (a).)

Explaining the term "financial interest" in section 87100, section 87103 provides: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following: [¶] (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more. [¶] (b) Any real property in which the public official has a

direct or indirect interest worth two thousand dollars ($2,000) or more. [¶] . . . [¶] (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. [¶] . . . [¶] For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

In addition to the statutory definition, "there are several regulations defining a 'material financial effect' in various contexts. These are to be found in title 2, California Code of Regulations, section 18702 et seq." (*People v. Honig* (1996) 48 Cal.App.4th 289, 326, fn. 15.) California Code of Regulations, title 2, section 18704.2 describes how real property may directly and indirectly be involved in the governmental decision and provides in pertinent part: "(a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply: [¶] (1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. . . . [¶] . . . [¶] (b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if: [¶] . . . [¶] (2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities."

Where a public official has a direct interest in real property in the form of a leasehold, "[t]he financial effect of a governmental decision on the real property in which an official holds a leasehold interest is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any effect on any of the following: [¶] (A) The termination date of the lease; [¶] (B) The amount of rent paid by the lessee for the leased real property, either positively or negatively; [¶] (C) The value of the lessee's right to sublease the real property, either positively or negatively; [¶] (D) The legally allowable use or the current

use of the real property by the lessee; or [¶] (E) The use or enjoyment of the leased real property by the lessee." (Cal. Code Regs., tit. 2, § 18705.2, subd. (a); see also Cal. Code Regs., tit. 2, § 18704.2, subd. (d)(1).)

On the other hand, the regulations provide "[t]he financial effect of a governmental decision on real property in which a public official has a leasehold interest and which is indirectly involved in the governmental decision is presumed not to be material. This presumption may be rebutted by proof that there are specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the governmental decision will: [¶] (A) Change the legally allowable use of the leased real property, and the lessee has a right to sublease the real property; [¶] (B) Change the lessee's actual use of the real property; [¶] (C) Substantially enhance or significantly decrease the lessee's use or enjoyment of the leased real property; [¶] (D) Increase or decrease the amount of rent for the leased real property by 5+percent during any 12-month period following the decision; or [¶] (E) Result in a change in the termination date of the lease." (Cal. Code Regs., tit. 2, § 18705.2, subd. (b); see also Cal. Code Regs., tit. 2, § 18704.2, subd. (d)(2).)

Addressing the concept of materiality, as opposed to whether a financial interest is direct or indirect, California Code of Regulations, title 2, section 18707.1, subdivision (a) provides that "the material financial effect of a governmental decision on a public official's economic interests is indistinguishable from its effect on the public generally if both subdivisions (b)(1) and (b)(2) of this regulation apply." According to California Code of Regulations, title 2, section 18707.1, subdivision (b)(1)(B), a material financial effect is not distinguishable from its effect on the public generally if "the decision also affects: [¶] (i) Ten percent or more of all property owners or all residential property owners in the jurisdiction of the official's agency or the district the official represents; or [¶] (ii) 5,000 property owners or residential property owners in the jurisdiction of the official's agency." California Code of Regulations, title 2, section 18707.1, subdivision (b)(1)(C) further provides that "[f]or decisions that affect a business entity in

which a public official has an economic interest, the decision also affects either 2,000 or twenty-five percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons composed of more than a single industry, trade, or profession." In order for California Code of Regulations, title 2, section 18707.1, subdivision (a) to apply, it must also be shown that "[t]he governmental decision will financially affect a public official's economic interest in substantially the same manner as it will affect the significant segment identified in subdivision (b)(1) of this regulation." (Cal. Code Regs., tit. 2, § 18707.1, subd. (b)(2).)

B. The Trial Court's Duty to Instruct and Standard of Review.

In connection with counts 4 and 5, the trial court instructed the jury that in order to establish appellant violated section 87100, the prosecution had the burden to prove that appellant was a public official who willfully made a government decision in which he knowingly had a financial interest. Employing the language used in the applicable statutes and regulations, the instructions defined several terms and further provided: "A public official has a 'financial interest' in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any real property in which the public official has a direct or indirect interest worth $2,000 or more."

After being instructed that a real property interest includes a leasehold, the jury received an instruction that "[a] public official has a 'direct' interest in real property if that property is located within 500 feet of the boundaries of the property which is the subject of the governmental decision." The instructions then tracked the language of California Code of Regulations, title 2, section 18705.2, subdivision (a), explaining that the financial effect of a governmental decision on real property in which the governmental official has a direct interest is presumed to be material and describing the manner in which that presumption may be rebutted.

The jury also received an instruction modeled after California Code of Regulations, title 2, section 18707.1, subdivisions (a) and (b), which provided: "A public official is not required to disqualify himself if the governmental decision affects his real

property interest in a manner that is indistinguishable from the manner in which the decision will affect the public generally. [¶] To meet the requirements of this exception both of the following must apply: [¶] (1.) The decision must affect a significant segment of the real property owners or renters in the City of Pico Rivera. [¶] 'Significant segment' is defined as ten percent of property owners or homeowners in Pico Rivera or 5,000 property owners or homeowners in Pico Rivera. [¶] (2.) The decision must financially affect a public official's interest in substantially the same manner as it will affect the significant segment defined above."

Though appellant did not request that any additional instructions on conflict of interest be given, he now contends that the trial court erred by omitting any instructions based on California Code of Regulations, title 2, sections 18704.2, subdivisions (b) and (d)(2), and 18705.2, subdivision (b), regarding the definition of indirectly involved real property and the presumption of immateriality that arises from a governmental decision affecting that real property interest.[3]

The trial court has a duty to instruct, sua sponte, on general principles of law that are applicable to the case. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1085; *People v. Ervin* (2000) 22 Cal.4th 48, 90.) The general principles of law governing a case are those that are commonly connected with the facts adduced at trial and that are necessary for the jury's understanding of the case. (*People v. Montoya* (1994) 7 Cal.4th 1027, 1047.) The duty to instruct on general principles of law extends to "particular defenses when a defendant appears to be relying on such defense and there is substantial evidence to support it [citation]." (*People v. Ainsworth* (1988) 45 Cal.3d 984, 1026.)[4] "[E]vidence is

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[3] Though appellant's claim is not expressly limited to count 4, his arguments are addressed solely to the evidence concerning the All American Asphalt contract which was the subject of count 4.

[4] While this duty has sometimes been phrased in the disjunctive (see, e.g., *People v. Michaels* (2002) 28 Cal.4th 486, 529) we have yet to see a case in which a trial court was required to instruct on a defense theory that was unsupported by actual evidence.

'substantial' only if a reasonable jury could find it persuasive." (*People v. Hagen* (1998) 19 Cal.4th 652, 672.)

"Although a trial court must instruct on every issue supported by substantial evidence, the court need not instruct on a theory which is not supported by the evidence. [Citations.]" (*People v. Funes* (1994) 23 Cal.App.4th 1506, 1523; accord, *People v. Memro* (1995) 11 Cal.4th 786, 868 ["[a] party is not entitled to an instruction on a theory for which there is no supporting evidence"].) "The trial court need not give instructions based solely on conjecture and speculation. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1200.) Moreover, when the instructions given are correct and adequate, the court has no sua sponte duty to provide amplification or explanation. (*People v. Estrada* (1995) 11 Cal.4th 568, 574.) Whether the trial court has correctly and adequately instructed the jury is to be considered from the entire charge to the jury. (*People v. Holt* (1997) 15 Cal.4th 619, 677.)

The determination of whether the trial court has a duty to give a particular jury instruction sua sponte is reviewed de novo. (See *People v. Guiuan* (1998) 18 Cal.4th 558, 569.) We independently review the record to determine whether appellant presented substantial evidence to support the giving of instructions concerning the definition and effect of a financial interest in real property that is indirectly affected by a governmental decision. (See *People v. Federico* (2011) 191 Cal.App.4th 1418, 1422.)

C. The Trial Court Had No Sua Sponte Duty to Instruct on the Presumption Arising From a Real Property Interest Indirectly Involved in a Governmental Decision.

Consistent with California Code of Regulations, title 2, section 18704.2, subdivision (a)(1), the jury was instructed that a "direct" interest in real property is shown "if that property is located within 500 feet of the boundaries of the property which is the subject of the governmental decision." The evidence was undisputed that appellant's restaurant was situated within 500 feet of the left-turn lane and stamped concrete that were installed at the intersection of Rosemead and Washington as part of the All American Asphalt contract.

Appellant argues that even though the evidence satisfied the 500-foot requirement, additional evidence showed that he was entitled to a further instruction based on California Code of Regulations, title 2, section 18704.2, subdivision (b)(2), which provides that a public official's real property is indirectly involved in a governmental decision if "(2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities." He points to testimony from All American Asphalt vice-president Mark Luer, who stated that the services provided by the contract were "concrete remov[al] and replacement, street removing and replacement, and asphalt laying." He also cites City Council minutes stating the purpose of the Rosemead project as "rehabilitation" as well as Fuentes' testimony that the All American Asphalt contract involved "improvement" to Rosemead. Appellant contends that this evidence showed the approval of the All American Asphalt contract involved "solely . . . repairs, replacement, or maintenance of existing streets," thereby supporting his theory that his restaurant was indirectly involved in the decision to approve the contract. (Cal. Code Regs., tit. 2, § 18704.2, subd. (b)(2).)

But the basis of appellant's conflict of interest in count 4 was not that he voted on the improvements to Rosemead as a whole. Rather, the focus of the prosecution's case was that appellant voted on a contract that included specific improvements—the addition of a left-turn lane and stamped concrete—within 500 feet of his restaurant. The undisputed evidence showed that the stamped concrete at the intersection of Rosemead and Washington was newly installed by All American Asphalt, as was the left-turn lane at the intersection of Rosemead and the Marketplace. Leah Kabbara testified that as part of the Kabbara Engineering contract, "we were instructed or directed to improve the pavement, the sidewalks in the intersection of Washington and Rosemead." Modifications to that initial contract included both the addition of a left-turn lane and stamped concrete at the intersections. All American Asphalt installed the improvements on the basis of Kabbara Engineering's specifications. Former City Public Works Director Michael Moore testified that these improvements were "add-ons" to the original

design which were installed by All American Asphalt and resulted in an increased cost to the City.

In light of the evidence showing that the intersection improvements which formed the basis for appellant's conflict of interest were far more than repairs, replacement or maintenance, there was no substantial evidence to support the giving of an additional instruction defining an indirect interest in real property. (See *People v. Schultz* (1987) 192 Cal.App.3d 535, 539 ["It is well established that a trial court is not obligated to give an instruction if the evidence presented at trial is such as to preclude a reasonable jury from finding the instruction applicable"].) These circumstances are unlike those in the cases cited by appellant, all of which involve the trial court's failure to instruct on an essential element of the offense. (See, e.g., *People v. Eid* (2010) 187 Cal.App.4th 859, 882–883 [prejudicial error to omit element of lack of consent in instruction on kidnapping for ransom]; *People v. Pierson* (2001) 86 Cal.App.4th 983, 992 [prejudicial error to omit instructing on requisite element of knowledge in connection with offense of engaging in the chemical synthesis of a substance as part of manufacturing a controlled substance].) Here, in contrast, there was simply no evidence to trigger the trial court's sua sponte duty to instruct on additional legal principles. The trial court did not commit any instructional error warranting reversal of appellant's conviction on count 4.

II. Substantial Evidence Supported the Jury's Verdict on Counts 4 and 5.

Appellant contends there was insufficient evidence to support his conviction on either count 4 or count 5. When a criminal conviction is challenged as lacking evidentiary support, "the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319.) We do not reweigh the evidence or resolve conflicts in the evidence. (*People v. Young, supra,* 34 Cal.4th at p. 1181.) Reversal on grounds of insufficient evidence "is

unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) It is appellant's burden to "'*affirmatively demonstrate* that the evidence is insufficient' on the point in dispute. [Citation.]" (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1430.)

A. Count 4.

On count 4, the jury found appellant guilty of violating section 87100 by reason of his vote to approve the All American Asphalt contract. To establish appellant's guilt, the prosecution had the burden to prove: "1. The defendant was a public official. [¶] 2. He willfully made a governmental decision. [¶] 3. In which he knowingly had a financial interest."

The evidence showed that appellant was a member of the City Council. His primary reason for running for office was to stabilize his own business interests. He voted to approve the All American Asphalt contract. As part of that contract, a left-turn lane and stamped concrete were added at the intersections of Rosemead and the Marketplace and Rosemead and Washington, respectively. Appellant's restaurant was within 500 feet of the intersections. The stamped concrete was not standard; All American Asphalt would have installed it only if it were specifically called for in the design contract. The left-turn lane facilitated access into the Marketplace of which appellant's restaurant was a part and, according to Pridonoff, made it "better for the businesses . . . ." Cassady opined that a foreseeable financial interest was presented by a City Council member voting on a decision, the subject of which was within 500 feet of a restaurant he operated pursuant to a 20-year lease on real property.

Appellant claims that there was insufficient evidence to show a foreseeable material financial effect from his decision because his economic interests were

indistinguishable from the effect on the public generally.[5] (Cal. Code Regs., tit. 2, § 18707.1.) At trial, appellant attempted to elicit testimony from Cassady to support this theory. As appellant points out, she testified that "[t]he actual repaving of a street is generally deemed to be affecting everyone in the same manner." But he omits her testimony immediately surrounding that statement, in which she clarified that her comment was limited to the effect of a general road repair. She testified that if the decision involved a specific improvement, such as the addition of a left-turn lane within 500 feet of a public official's business, then to establish an indistinguishable effect on the general public the improvement would need "to have five thousand businesses affected in the same manner as the official's business. Or ten percent of the population would have to have the same financial impact as the official's business interest." Cassady explained there is a bright-line distinction between street paving that affects the general population equally, and new construction or improvements that occur within 500 feet of a public official's business. Under the latter scenario, the improvement is deemed not to have a material effect on the public official's financial interest only when it is affirmatively shown that 5,000 or ten percent of the businesses in the jurisdiction are affected by the improvement in the same manner.

Because there was no evidence offered to show the effect on other businesses of the left-turn lane and stamped concrete, there was no basis for application of California Code of Regulations, title 2, section 18707.1. Substantial evidence supported the jury's verdict on count 4 that appellant violated section 87100.

B. Count 5.

On count 5, the jury found appellant guilty of violating section 87100 by reason of his vote to approve the Mobility Solutions contract. The elements of the offense were the same as in count 4. The evidence showed that, in his role as a City Council member, appellant voted to approve the Mobility Solutions contract with the City. The contract

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5 Appellant also contends that the evidence showed only an interest indirectly affected by his decision, a contention we have already rejected in connection with appellant's claim of instructional error.

called for the design of two traffic signals—one at the intersection of Washington and Loch Alene Avenue and the other at Rosemead and the Marketplace, the latter immediately adjacent to appellant's restaurant. Appellant later abstained from voting on the City contract for the installation of the traffic signal at Rosemead and the Marketplace, which was based on the Mobility Solutions design.

Appellant contends that the evidence was insufficient to establish a requirement of California Code of Regulations, title 2, section 18704.2, subdivision (a)(1) that "[t]he real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the *property* which is the subject of the governmental decision." (Italics added.) He claims that because the Mobility Solutions contract involved only the design of the traffic signal—and not its installation—there was no "property" that was the subject of a governmental decision within the meaning of the regulation.

The evidence belies his claim. The Mobility Solutions contract did not involve the design of a traffic signal for an unidentified or hypothetical location. To the contrary, the contract expressly described the signal as being "installed at the main access for LA Fitness and adjacent commercial development driveway located between the intersections of Washington Boulevard and Carron Drive." In addition to containing additional specifications regarding the location of the traffic signal, the Mobility Solutions contract also included photographs of the site. Consistent with the contract's specifications, the City Council agenda described the resolution on which appellant voted as authorizing the City Manager to execute a contract which included the "design of new traffic signals at the intersections of Washington Blvd. and Loch Alene Avenue, and Rosemead Blvd. and the entrance to Pico Rivera Marketplace." Both the Mobility Solutions contract and the resolution on which appellant voted to authorize that contract involved property that was the subject of a governmental decision within a proximity to appellant's business as specified by California Code of Regulations, title 2, section 18704.2, subdivision (a)(1). Substantial evidence supported appellant's conviction on count 5.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ